?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 12.11.2018

*CORAM
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

+S.A(MD) No.12 of 2007
and
M.P(MD)No.2 of 2007

#1.Veluchamy
2.Semalai @ Kuttikkaran
3.Krishnasamy ...Defendants/Respondents/
Appellant

vs.

$1.Lakshmanasamy Gounder
2.Natarajan ...Plaintiffs/Appellants/
Respondents

Prayer: Second appeal filed under Section 100 of Civil Procedure Code, against the Judgment and decree, dated 20.04.2005 and made in A.S.No.630 of 2004, on the file of the Additional Subordinate Court, Dindigul, reversing the judgment and decree, dated 15.11.1996 and made in O.S.No.294 of 1991 on the file of the I Additional District Munsif Court, Dindigul.

!For Appellants : Mr.R.Nanda Kumar
^For R1 : Dismissed
For R2 : Mr.P.Chellapandian
for Mr.D.Venkatesh

:JUDGMENT
This appeal is at the instance of the defendants in O.S.No.294 of 1991. The said suit was filed by the respondents/plaintiffs herein seeking declaration of the title to the suit properties and for injunction restraining the defendants from interfering with their possession.

2.The case of the plaintiffs is that they have purchased the suit property under Ex.A5 and Ex.A6, dated 15.12.41. It is the further case that they also purchased other properties on the Southern side of the suit property under Ex.A2 and Ex.A3, dated 26.11.43 and 02.04.41 respectively. They would further claim that there is a Well on the Western side of the suit property. According to the plaintiffs, the defendants, who own a house on the northern side of the suit property attempted to have a door way on the

southern side of the house and thereby tress~pass into the properties of the plaintiffs. Hence, the plaintiffs filed a suit for declaration of title and permanent injunction.

3.The suit was resisted by the defendants contending that the predecessor in interest of defendants namely the grand~father of the first defendant had purchased the suit property on 16.1.1909 under Ex.B1. It is the further contention of the defendants that the property purchased by Semalai Gounder, the grand~father of the first defendant would taken it the suit property also. They have also relied upon the description in the said document that there was a house with a door way on the Southern side in the property conveyed under Ex.B1. The defendants further pleaded that the sale deed, dated 15.12.41 viz., Ex.A6 does not relate to the suit property.

4.At trial, the second plaintiff was examined as P.W.1 and one Vanjiappan was examined as P.W.2. The first defendant was examined as D.W.1 and one Ramasamy was examined as D.W.1. Exs.A1 to A13 were marked on the side of the plaintiffs. Exs.B1 to B9 were marked on the side of the defendants. An Advocate Commissioner was appointed pending suit and the Commissioner has also filed a report and plan under Ex.C1 and Ex.C2 respectively.

5.Upon consideration of the evidence on record, the learned Trial Judge found that there is a discripancy in the boundary recitals and measurements as found in Ex.A5 and Ex.A6 and Commissioner-s Reports. The learned Judge found that the defendants are in possession of the lesser extent than they are actually entitled to under Ex.B1, dated 16.1.1909. On such finding, the Trial Judge dismissed the suit.

6.Aggrieved by the same, the plaintiffs went on appeal in A.S.No.630 of 2004. The learned appellate Judge reversed the findings of the Trial Judge. In doing so, the learned appellate Judge relied upon the boundary recitals in the sale deed under which the defendants grand~father Semalai Gounder had purchased the property on 16.1.1909 as well as the boundary recitals in the Ex.A2 and Ex.A3, dated 26.11.43 and 2.4.41 to conclude that the plaintiffs have conclusively established the title to the suit property.

7.Aggrieved, the defendants on appeal.

8.The following questions of law were framed at the time of admission.

?1.Whether the learned Appellate Judge has not committed an error in not considering the document of title produced by the appellants of the year 1909 and also the report of the commissioner?
2.Whether the learned Appellate Judge as a final court of fact has not committed an error in not considering the documents produced by both parties and the plan and report of the commissioner??

9.I have heard Mr.R.Nanda Kumar, learned counsel appearing for the appellants and Mr.P.Chellapandian, learned counsel appearing for the second respondent.

10.Mr.R.Nanda Kumar, learned counsel for the appellant would contend that the lower appellate Court was not right in concluding that the plaintiffs have established their title to the suit property. According to him, the boundary recitals to Ex.B1, which is the earliest document of the year 1909 would prevail. He would further contend that the lower appellate Court was not justified in reversing the findings of the trial judge on the basis of the surmises and presumptions.

11. Per contra, Mr.P.Chellapandian, learned counsel appearing for the second respondent would submit that the lower appellate Court as a final Court on facts, has taken into account the boundary recitals in all the five documents Exs.A2, A3, A5, A6 and Ex.B1 to conclude that the plaintiffs have established the title to the suit property and would also rely the specific finding of the lower appellate Court, wherein the lower appellate Court has concluded that even Ex.B1 refers to the predecessor in interest of the plaintiffs as the southern owner. He would also contend that the questions of law framed do not in fact arise for consideration.

12.Question No.1:~
The lower appellate court had infact taken into account the boundary recitals found in Ex.B1. As rightly pointed out by the learned counsel for the respondents even according to the boundary recitals Ex.B1 southern owner is shown to be one Ramasamy Gounder, who is admittedly the predecessor in interest of the plaintiffs. The lower appellate Court has also taken into account the recitals Ex.A5 and Ex.A6 under which the plaintiffs have purchased the properties situated on the southern side of the suit property wherein, the suit property has shown as southern boundary. The description in Ex.B1 that there was a hut with opening on the southern side alone would not vest the title to the suit property, which is admittedly situated in southern side of the property purchased by the defendant under Ex.B1. The Trial Judge however, rejected the claim of the plaintiffs on the ground that the boundary recitals in the documents that emanated in the year as early as on 02.04.41 did not tally with the boundaries set out in the plaint. I am unable to accept such an approach made by the trial judge as ownership may change by passage of time, the same owners may not continue and there will be definitely a change in the boundaries. The lower appellate Court rightly taken into account the recital regarding existence of the Well in the suit properties in all, the documents relied upon and the report of the Commissioner would show that the land on the eastern side of the well was infact purchased by the plaintiffs under Ex.A5 & A6, dated 15.12.41. I do not find any error in the said finding and I am unable to interfere with the same, particularly, under Section 100 of the Civil Procedure Code. Hence, question No.1 answered against the appellant and in favour of the respondent.
13.Question No.2
I find that the lower appellate Court had infact discussed the entire evidence including the boundary recitals in each of the documents namely the title deeds i.e., Ex.B1, Ex.A2, A3, A5 and A6 and based on the boundary recitals, found in Ex.A5 and A6 and the boundary recitals found in Ex.B1. The lower appellate Court has concluded that the suit property is the property conveyed to the plaintiffs under Ex.A5 and A6.

14.Mr.R.Nanda Kumar, learned counsel for the appellants would contend that the defendants are not in possession of the entire extent of the property purchased by them under Ex.B1 and therefore, the said defecit should be made up by including the land in the southern side. I am afraid, such a contention cannot be countenanced in a suit filed by the plaintiffs and therefore, I am of the opinion that the second question of law actually does not arise for consideration since, I find that the lower appellate Court has gone into the description in the boundary recitals and has come to the factual conclusion that the suit property is the property purchased by the plaintiffs under Ex.A5 & A6, dated 15.12.41. Therefore, I see no merit in the appeal. The appeal is dismissed confirming the judgment of the lower appellate Court. However, there will be no order as to costs.

To

1.The Additional Sub Court,
Dindigul.

2.The I Additional District Munsif Court,
Dindigul.